Dato' Gopal Sri Ram v Dato' C Vijaya Kumar & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S1–22–1311 OF 2005
KANG HWEE GEE J
13 JULY 2006

Civil Procedure — Pleadings — Evidence — Reasons why evidence ought not be pleaded

Civil Procedure — Pleadings — Matters to be pleaded — Whether material facts ought only to be pleaded — Whether evidence ought to be pleaded — Reasons why evidence ought not be pleaded — Rules of High Court 1980 O 18 r 7(1)

Civil Procedure — Striking out — Defence — Paragraph in defence particularizing evidence — Paragraph not summarizing facts concisely — Whether paragraph in defence vexatious, an abuse of the process of court and calculated to prejudice the fair trial of plaintiff's action — Whether paragraph ought to be amended rather than struck out

The plaintiff, a former legal practitioner, sued the defendants for the return of a law library and for the discontinuance of the use of his name as the name of the defendants' law firm. The first defendant contended that the plaintiff was not entitled to claim the return of the library or seek the discontinuance of the firm's name. In his defence, the first defendant, inter alia, contended that the plaintiff had a specific motive for requesting the return of the law library and for wanting the defendants to cease using his name as the name of the firm. In paragraph 10 of his defence, the first defendant thus cited several particulars that ostensibly would establish such motive. The plaintiff applied to strike out paragraph 10 of the defence pursuant to O 18 r 19(1) of the Rules of High Court 1980 ('the RHC'). The application was grounded essentially on the submission that the plaintiff's motive was irrelevant to the issues of ownership and conversion as pleaded by the plaintiff, and that paragraph 10 was scandalous, vexatious and calculated to embarrass or prejudice the fair trial of the plaintiff's action. The first defendant opposed the application on the basis that paragraph 10 was material to and directly connected to the facts in issue. The question before the High Court concerned the application of the fundamental rule of pleading embodied in O 18 r 7(1) of the RHC.

Held:

(1) Order 18 r 7(1) of the RHC requires a party to write his pleading in the form of a skeletal statement of fact sufficient to identify the matters complained of and to enable him to establish his case at the trial based on what he pleads. All matters of evidence to prove his case are to be reserved for the trial and must not be pleaded (see para 17).

(2) To satisfy the rule on pleadings, the first defendant was only required to plead 'material facts' necessary for his defence — material facts being facts relevant to his defence. In the instant case, the High Court would accept that the first defendant had pleaded a material fact in paragraph 10 of his defence (see paras 22–23, 25).

(3) However, it was clear that paragraph 10 had offended O 18 r 7(1) of the RHC in that: (i) evidence by which the facts were to be proved had been stated, and (ii) the facts had not been stated concisely in a summary form. Paragraph 10 constituted a statement of evidence of motive rather than a concise fact of it. The paragraph thus could not be allowed to stand as it stood (see paras 25, 27).

(4) There are at least two reasons why the fundamental rule of pleading requires only concise facts be pleaded and not evidence. Firstly, by pleading evidence rather than a concise statement of fact, there is a likelihood of compromising the neutrality of the judge consciously or subconsciously before he hears the evidence. Secondly, a statement by a party purporting to state evidence rather than concise fact may well be erroneously assumed to be true by others, even before its truth is ascertained by a judge after assessing evidence presented (see paras 33–35).

(5) In the instant case, paragraph 10 could have exposed the plaintiff to prejudgment, prejudice and probable untruth. It was therefore vexatious and an abuse of the process of the court and calculated to prejudice the fair trial of the plaintiff's action. However, paragraph 10 was at most imperfect and the first defendant should not be deprived of a line of his defence. Paragraph 10 ought not therefore be struck out but rather the first defendant ought to be granted latitude to amend his pleading to conform to the requirement of O 18 r 7(1) of the RHC (see paras 36, 38).

[Bahasa Malaysia summary

Plaintif, bekas peguam, telah menyaman defendan-defendan untuk memulangkan perpustakaan undang-undang dan untuk tidak lagi menggunakan nama beliau sebagai nama firma guaman defendan-defendan. Defendan pertama menegaskan bahawa plaintif tiada hak untuk menuntut kembali perpustakaan itu atau memohon penghentian nama firma itu. Dalam pembelaannya, defendan pertama, antara lain, menegaskan bahawa plaintif mempunyai tujuan khusus untuk meminta perpustakaan undang-undang itu kembali dan untuk menginginkan defendan-defendan berhenti menggunakan namanya sebagai nama firma tersebut. Dalam perenggan 10 pembelaannya, defendan pertama telah memetik beberapa butir-butir yang kononnya akan membuktikan tujuan tersebut. Plaintif memohon perenggan 10 kepada pembelaan itu dibatalkan menurut A 18 k 19(1) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Permohonan itu berasaskan hujah bahawa tujuan plaintif adalah tidak relevan terhadap isu-isu pemilikan dan penukaran seperti yang diplidkan oleh plaintif, dan bahawa perenggan 10 adalah melampau, menyusahkan dan dikira memalukan atau memprejudiskan perbicaraan adil terhadap tindakan plaintif. Defendan pertama menentang permohonan itu berasaskan bahawa perenggan 10 adalah penting dan secara langsung berkaitan

kepada fakta-fakta yang dipersoalkan. Persoalan di hadapan Mahkamah Tinggi berkaitan permohonan rukun asas pliding terangkum dalam A 18 k 7(1) KMT. A

Diputuskan: B

(1) Aturan 18 k 7(1) KMT menghendaki satu pihak menulis plidingnya dalam bentuk suatu rangka penyataan fakta memadai untuk mengenalpasti perkara-perkara yang diadukan dan untuk membolehkannya membuktikan kesnya dalam perbicaraan berdasarkan apa yang beliau telah memplidkan. Apa-apa perkara tentang keterangan untuk membuktikan kesnya hendaklah dikemukakan semasa perbicaraan dan tidak mesti diplidkan (lihat perenggan 17). C

(2) Untuk memenuhi rukun berhubung pliding, defendan pertama hanya dikehendaki memplidkan 'material facts' yang perlu dalam pembelaannya — fakta-fakta penting yang merupakan fakta-fakta yang relevan kepada pembelaannya. Dalam kes semasa, Mahkamah Tinggi menerima bahawa defendan pertama telah memplidkan fakta yang penting dalam perenggan 10 kepada pembelaannya (lihat perenggan 22–23, 25). D

(3) Namun, adalah jelas bahawa perenggan 10 telah melanggar A 18 k 7(1) KMT di mana: (i) keterangan di mana fakta-fakta itu perlu dibuktikan telah dinyatakan; dan (ii) fakta-fakta itu tidak dinyatakan dalam bentuk yang ringkas. Perenggan 10 membentuk satu penyataan keterangan tentang tujuan dan bukan fakta ringkas tentangnya. Perenggan itu oleh demikian tidak boleh dibenarkan seperti sekarang (lihat perenggan 25, 27). E

(4) Terdapat dua alasan kenapa rukun asas pliding menghendaki hanya fakta-fakta ringkas diplidkan dan bukan keterangan. Pertamanya, dengan memplidkan keterangan dan bukan ringkasan penyataan fakta, terdapat kebarangkalian yang menimbulkan curiga terhadap keberkecualian hakim secara sedar atau tidak sedar sebelum beliau mendengar keterangan itu. Keduanya, suatu penyataan oleh suatu pihak yang bermaksud untuk menyatakan keterangan dan bukan ringkasan fakta mungkin akan diandaikan secara salah sebagai suatu yang benar oleh yang lain, sebelum kebenarannya ditentukan oleh seorang hakim selepas menilai keterangan yang dikemukakan (lihat perenggan 33–35). F G

(5) Dalam kes semasa, perenggan 10 mungkin mendedahkan plaintif kepada pra penghakiman, prejudis dan mungkin juga ketidakbenaran. Oleh itu ia adalah menyusahkan dan satu penyalahgunaan proses mahkamah dan dikira memprejudiskan perbicaraan adil terhadap tindakan plaintif. Bagaimanapun, perenggan 10 adalah tidak sempurna dan defendan pertama tidak boleh dinafikan pembelaannya. Perenggan 10 tidak sepatutnya dibatalkan tetapi defendan pertama patut dibenarkan kebebasan untuk meminda plidingnya untuk memenuhi keperluan A 18 k 7(1) KMT (lihat perenggan 36, 38).] H I

Notes

For cases on defence for striking out, see 1 *Mallal's Digest* (4th Ed) Consolidated Subject Index paras 5937–5942.

For cases on evidence in pleadings, see 1 *Mallal's Digest* (4th Ed) Consolidated Subject Index paras 4806–4808.

For cases on matters to be pleaded, see 1 *Mallal's Digest* (4th Ed) Consolidated Subject Index paras 4865–4866.

Cases referred to

Barclays Bank v Boulter [1999] 1 WLR 1919 (refd)

Jusoh v Ng Ah Sooi [1963] MLJ 92 (refd)

Mrs Kok Wee Kiat v Kuala Lumpur Stock Exchange Bhd & Ors [1978] 2 MLJ 123 (refd)

Smith & Co v British Marine Mutual Insurance Association The Weekly Notes, 29 December 1883 (refd)

Sundaram v Chew Choo Khoon [1968] 2 MLJ 153 (refd)

Legislation referred to

Rules of the High Court 1980 O 18 rr 7(1), (2), 13(1), 19(1)
Rules of the Supreme Court 1957 O 19 r 22

Raja Aziz Addruse (WL Yau with him) (Chan & Associates) for the plaintiff.

Dato' Param Cumaraswamy (Chetan Jethwani with him) (Kumar Partnership) for the defendants.

Kang Hwee Gee J:

[1] This is an application by the plaintiff to strike out paragraph 10 of the first defendant's defence on the ground that it is scandalous, frivolous or vexatious and that it may prejudice, embarrass or delay the fair trial of the action or is otherwise an abuse of the process of the court, pursuant to O 18 r 19(1) of the Rules of the High Court 1980 ('RHC').

[2] The suit itself involves a straightforward claim by the plaintiff now a judge of the Court of Appeal, for the return of a law library and a request to discontinue the use of his name as the name of defendants' law firm.

[3] There is also a counterclaim by the first defendant but it is unrelated to the present application.

THE STATEMENT OF CLAIM

[4] The plaintiff's statement of claim discloses that he was a former partner of the legal firm which bears his name, Sri Ram & Co.

[5] Upon being elevated to the Court of Appeal as an appeal court judge in 1994, the plaintiff relinquished his partnership in the firm to the first defendant and two other partners, Mr Manjit Singh and Ms Fiona Bodipalar.

[6] The plaintiff contends that he had left the use of the law library which he claimed sole ownership of, for the use of the partners until such time as he may require it back for his own use. As for the use of his name as the name of the firm, the plaintiff contends that just before his retirement from the firm the first defendant requested that he and the other partners be permitted to retain it for their practice.

[7] By paragraphs 13 to 16 of the statement of claim, the plaintiff pleaded that sometime in 1997, he requested the aforementioned partners to cease using his name as the firm's name. They had initially agreed to his request, but subsequently the first defendant requested that they be permitted to continue to use the name. He had acceded to that request.

[8] Sometime in February 2005, he requested the first defendant as the senior-most partner for the return of the law library and to discontinue the name. He received a reply by letter dated 15 February 2005 from the first defendant rejecting both his requests.

THE DEFENCE

[9] The first defendant disputes the plaintiff's claim to the proprietorship of the law library and the name of the firm. The library it is averred was built up from funds provided by the firm and had after the plaintiff left been enlarged by the purchase of additional books at substantial expense.

[10] The first defendant's defence however, rests essentially on the averment that before leaving the bar for the bench the plaintiff had by an oral agreement relinquished absolutely to him for a stated monetary consideration the share of the partnership, the law library and the use of the firm's name which carried a substantial goodwill in view of the plaintiff's high standing at the Bar. The said consideration was paid later to the plaintiff from fees collected from a client. Upon acquiring the plaintiff's share, he then invited Mr Manjit Singh and Ms Fiona Bodipalar to join him in a new partnership.

[11] It is contended that the plaintiff no longer has any residual interest in the firm and is therefore not entitled to claim the return of the library nor to seek the order that the defendants discontinue the use of the firm's name.

PARAGRAPH 10

[12] The first defendant went on to plead under paragraph 10 of his defence (the subject matter of this application) that the plaintiff had a motive for requesting for the return of the law library and for wanting the defendants to cease using his name as the name of the firm. To appreciate the nature of the plaintiff's complaint, it is necessary to reproduce the paragraph as follows:

> EVENTS & MOTIVE RESULTING IN THE BREACH OF THE ORAL AGREEMEMT
>
> 10 With respect to paragraphs 13 to 16 of the statement of claim, the first defendant states as follows:

(a) sometime in August 2004, the plaintiff telephoned the first defendant requesting that his spouse, Datin Chandra Sri Ram Nee Ramamoorthy ('Datin Chandra') who had qualified as a lawyer, be accepted as the first defendant's pupil. The first defendant agreed;

(b) Datin Chandra commenced pupilage on 23 August 2004 with the first defendant as her pupil master. Whilst a pupil, the said Datin Chandra was privy to the goodwill associated with the firm and had unrestricted access to the law library of the firm;

(c) sometime in early February 2005, the plaintiff telephoned the first defendant and sought a luncheon appointment at the Shang Palace, Shangri-La Hotel, Kuala Lumpur, purportedly for the purpose of the plaintiff 'sharing good news' with the first defendant. An appointment was made for the plaintiff to meet with the first defendant on 4 February 2005;

(d) on or about 3 February 2005, one day prior to the scheduled appointment, Datin Chandra informed the first defendant that she intended to transfer her pupilage to Mr Soo Thien Ming, citing the time taken for travel and domestic duties as being an impediment to her continued pupilage under the first defendant;

(e) on 4 February 2005, the first defendant met the plaintiff. At that meeting, the plaintiff informed the first defendant that the Keeper of the Royal Seal had informed the plaintiff of his imminent appointment as a judge of the Federal Court. The plaintiff also informed the first defendant that he had been asked by the Keeper of the Royal Seal to contact the administrative head of the judiciary, namely, the Chief Justice of Malaysia, who had directed him to procure a change of the firm's name in keeping with the plaintiff's oath of allegiance under the 'new regulations';

(f) the first defendant found the plaintiff's statements incredulous and seriously doubted the veracity of the same. As such, the first defendant sought clarification on how the plaintiff's impending appointment to the Federal Court could possibly require a change in the firm's name given the first defendant's absolute ownership of the name. At that point, the plaintiff raised his voice and said that he had intended the meeting to be amicable without it turning acrimonious and simultaneously demanded the return of the law library;

(g) in response, the first defendant informed the plaintiff that the plaintiff had no right, interest in or claim of any kind to the name of the firm or the law library and left the meeting in the face of the wrongful and improper demands made by the plaintiff. As the first defendant was leaving the meeting, the plaintiff changed his tone and began to plead with the first defendant stating that he was only trying to help his family;

(h) despite the position taken by the first defendant, the plaintiff wrote several letters to the first defendant and sent numerous emissaries to meet the first defendant with the same demands. The first defendant's response to the plaintiff's letters and his emissaries was that the first defendant had the exclusive rights to and the ownership of the name of the firm and the law library and that he was not about to be oppressed by the plaintiff;

(i) further, the first defendant states that he is factually and lawfully entitled to refute the demands and reject outright the plaintiff's proposals to have the matter resolved in accordance with his wishes; and

(j) the first defendant contends that the plaintiff was actuated in making the improper and unlawful demands outlined in the preceding paragraphs by:

(i) the fact that Datin Chandra and the plaintiff's son are qualified lawyers;

(ii) the plaintiff is due for retirement in a matter of three years and will be competent to practice as a consultant and/or arbitrator;

(iii) with the benefit of the goodwill in the name of the firm and the availability of a law library, the plaintiff and members of his family would have the benefit of a complete presence and platform to commence and practice law.

THE GROUNDS FOR AND AGAINST STRIKING OUT

[13] The plaintiff's application is grounded essentially on the submission that the plaintiff's motive is irrelevant to the issues of ownership and conversion as pleaded by the plaintiff and that paragraph 10 is scandalous, vexatious and calculated to embarrass or prejudice the fair trial of the plaintiff's action. The first defendant's pleading it is submitted, should only focus on denial of ownership or entitlement to possession.

[14] The application is opposed on the ground that paragraph 10 is material to and directly connected to the facts in issue as it sets out an accurate account of events leading up to the plaintiff's unlawful demands and the manner of the said demands after the parties had abided by the oral agreement for 11 years.

THE FUNDAMENTAL RULE OF PLEADING

[15] On my part, I am quite certain that all I need to do to dispose of this application is to apply the fundamental rule of pleading developed through hundred of years of use and now embodied in O 18 r 7(1) of the RHC.

[16] O 18 r 7(1) reads as follows:

7 Facts, not evidence, to be pleaded. (O 18 r 7)

(1) Subject to the provisions of this rule and rules 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

[17] In essence, O 18 r 7(1) requires a party to write his pleading in the form of a skeletal statement of fact sufficient to identify the matters complained of and to enable him to establish his case at the trial based on what he pleads. All matters of evidence to prove his case are to be reserved for the trial and must not be pleaded.

[18] To quote *Odgers on Civil Court Actions* (24th Ed, 1996) (stating the rule as it stood before the Woolf reform introduced the current CPR in England):

O 18 r 7 involves and requires four separate things:

(i) Every pleading must state facts and not law.

(ii) It must state material facts and material facts only.

(iii) It must state facts and not the evidence by which they are to be proved.

(iv) It must state such facts concisely in a summary form.

APPRECIATING AND APPLYING THE FUNDAMENTAL

[19] It is to be noted that r 7(1) requires 'material facts' to be pleaded. No mention is made of the word 'relevant'.

[20] Odgers goes on to say at p 155 that:

> The word 'material' means necessary for the purpose of formulating a complete cause of action, and if any one 'material' fact is omitted, the statement of claim is bad' (per Scott LJ in *Bruce v Odhams Press Ltd* [1936] 1 KB 697 at p 712). The same principle applies to defences.
>
> Facts which are not necessary to establish either a cause of action or the defence to it are not, speaking generally, 'material' within the meaning of O 18 r 7 and should, therefore, be omitted from the pleading unless it is clear that evidence will have to be given of them at the trial.

[21] The practice adopted by the court with respect to immaterial allegation in a pleading is to treat that allegation as a mere surplusage to be left alone and not to be traversed. Provided O 18 r 7(1) is complied with a party should not therefore be prejudiced by any immaterial fact that may have been pleaded by his opponent.

[22] Relevancy on the other hand, is a matter of evidence to be adduced and determined at the trial and not at the pleading stage. To satisfy the rule on pleading, the first defendant is only required to plead 'material facts' which he thinks are necessary for his defence.

[23] A material fact may well have to be facts relevant to his defence for he runs the risk of having his entire defence (as opposed to only a paragraph as in the instant case) struck out if as a whole his pleading does not disclose a reasonable defence.

[24] I am therefore unable to accept the submission of counsel for the plaintiff, Raja Aziz Addruse that paragraph 10 ought to be struck out merely on the ground that motive is not relevant to the plaintiff's claim.

[25] I would accept the submission of counsel for the defendants, Dato' Param Cumaraswamy that what is pleaded in paragraph 10 relates to what the first defendant had intended to establish as his defence to the plaintiff's claim as pleaded and in that sense has pleaded in that paragraph a material fact which ought not to be struck out. But having read paragraph 10 objectively, it is at once clear to me the said paragraph has offended O 18 r 7(1) in that:

(i) evidence by which they are to be proved has been stated, and

(ii) the facts have not been stated concisely in a summary form.

[26] I can appreciate the submission of Dato' Param Cumaraswamy that the defendants intend to plead the motive as to why the plaintiff is now claiming the return of law library and had wanted the first defendant to discontinue the use of his name and that if this is not allowed to be pleaded the first defendant may run foul of the requirement of O 18 r 13(1) which provides that 'any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading' and consequentially may not be allowed to introduce any evidence on this point at the trial.

[27] But paragraph 10, it is clear to me, constitutes a statement of evidence of motive rather than a concise fact of it. To that extent therefore that paragraph has contravened O 18 r 7(1) and should not be allowed to stand in its present form.

[28] The rule is well established

[29] In *Jusoh v Ng Ah Sooi* [1963] MLJ 92, a pleading in a fatal accident claim referring to a defendant's guilty plea in a traffic conviction was held to constitute evidence and ordered to be struck out.

[30] Similarly in *Sundaram v Chew Choo Khoon* [1968] 2 MLJ 153, a pleading in a moneylender's claim referring to a negotiation which took place between the defendant and the plaintiff's brother was disallowed on the ground that evidence and not 'material fact' had been pleaded.

[31] The later Federal Court decision in *Mrs Kok Wee Kiat v Kuala Lumpur Stock Exchange Bhd & Ors* [1978] 2 MLJ 123, provides an authoritative case study of the extent to which necessary particulars which are required to be pleaded should be allowed. The decision involved the appellant's reply in a defamation suit in which 61 pages of particulars were pleaded. Both the High Court and the Federal Court found that particulars which contained allegations of irregularities and corrupt practices were evidence despite the appellant's seemingly viable submission that the particulars were required to be pleaded under O 19 r 22 of the Rules of the Supreme Court 1957 then in use, and which read as follows:

> Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred:
>
> Provided that where in an action for libel or slander the defendant pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion, the plaintiff shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters from which such malice is to be inferred.

[32] A strong bench of the Federal Court (Raja Azlan Shah, Wan Sulaiman and Syed Othman FJJ) approved of what the High Court judge said in allowing the respondent's application to strike out the offending paragraph. This was what his Lordship said:

> It is true that a substantial part of the particulars are matters which may be properly set out but the particulars that are clearly evidence and which strictly should not appear and ought to be struck out seem to occupy a greater portion of those particulars. … Fundamentally she had gone beyond what is required by the proviso of O 19 r 22 particularly in the light of r 4 which provides that only the material facts must be pleaded but not evidence by which they are to be proved.

[33] I can think of at least two reasons why the fundamental rule of pleading requires only concise facts be pleaded and not evidence.

[34] First, in an action begun by writ in the adversarial system of justice a pleading as Lord Hoffmann said in *Barclays Bank v Boulter* [1999] 1 WLR 1919 at p 1923 'is meant to define the issues and give the other party fair notice of the case he has to meet.' The judge plays a purely non partisan role of a referee whose mind must be kept pure and free from any prejudice and prejudgment until he sits at the trial and hears evidence. By pleading evidence rather than a concise statement of fact, there is a likelihood of compromising the neutrality of the judge consciously or subconsciously before he gets to hear the evidence.

[35] Second, a pleading is a privileged public document to which the public has access. The facts stated therein are purely allegations and counter allegations the truth of which may only be ascertained after evidence is presented and assessed by the judge. A statement by a party purporting to state therein evidence rather than concise fact may well be erroneously assumed to be true by others.

[36] By pleading evidence in advance of the trial, the defendants in the instant case could well have exposed the plaintiff to such prejudgment, prejudice and probable untruth. To that extent therefore paragraph 10 is in my view scandalous, vexatious and an abuse of the process of the court. I can therefore appreciate and I accept the brief submission of Raja Aziz Addruse (citing in support *Smith & Co v British Marine Mutual Insurance Association* The Weekly Notes, 29 December 1883) that paragraph 10 is calculated to prejudice the fair trial of the plaintiff's action.

[37] Indeed if the narrative in paragraph 10 is intended only to put forward a motive, this could be traversed simply by a statement of fact without alluding to evidence such that it would not offend O 18 r 7(1) and (2). It could for instance take such simple form as this:

> Paragraphs 13 to 16 is admitted (or denied as the case may be). The first defendant says that the intention of the plaintiff in wanting the first defendant to stop using his name as the name of the firm and the return of the law library was motivated by the fact that the plaintiff had intended to return to practice law together with his wife and son under the said name which is now the subject of dispute.

THE ORDER

[38] The infraction notwithstanding, paragraph 10 is at most imperfect. The first defendant should not be deprived of a line of his defence which at this stage he alone

can decide. The remedy is not to strike out but to render paragraph 10 benign by allowing him the latitude to amend his pleading to conform to the requirement of O 18 r 7(1). This should be done within three weeks from today failing which paragraph 10 shall be struck out. The plaintiff is at liberty to reply to the amended pleading within three weeks from the service of the amended pleading on him.

[39] The costs of this application shall be in the cause.

Order accordingly.

Reported by John Paul Simon